TO: EPA
RE: Headwater sources and wetlands
FROM: Sabra Hull
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I am writing as a wetlands specialist for Washington State's Department of Natural Resources (DNR) in reference to the Advance Notice of Proposed Rulemaking on changes to the Clean Water Act definition of Waters of the United States, in light of the SWANCC decision. I respectfully request that the EPA interpret the SWANCC decision conservatively until such time as Congress can reexamine federal protection for "isolated " wetlands and any other water sources that may be in danger of losing federal protection in the wake of the SWANCC decision. My concerns are based on the potential of broad interpretations of the SWANCC ruling to increase risk to resources managed by DNR.

The Washington DNR has a "no net loss of wetlands" policy, as well as a commitment through our Habitat Conservation Plan to protect all wetlands over one quarter of an acre in size on state lands.[1] [2] These commitments are critical to our riparian strategy, which supports our salmon protection and recovery efforts. The policy is also supportive of other management goals including maintenance of downstream water quality and wildlife habitat, and flood peak attenuation. Because Washington DNR operates in a mosaic of land ownerships, we are acutely aware of how management of surface and ground water on neighboring properties affects state lands. When hydrology is disrupted the effects cross ownership boundaries. Increased flooding due to hydrologic disruption could increase our road building, road maintenance and land management expenses. Existing state wetland regulations cannot replace federal laws.

Many of the isolated wetlands and ephemeral streams that could lose protection under a broad interpretation of the SWANCC decision are headwater sources, some of which are conduits through which clean groundwater enters hydrologic systems. Loss of federal protection for these sources could have significant bearing on down-gradient water quality and quantity. At a time when western states are experiencing sustained drought and devastating wildfires, we need to pay particular attention to the protection of all of our water sources.

All waters deserve and require federal protection, whether apparently isolated from other surface waters or not. In today's economic climate, many states will be unable to enforce compliance on wetland regulations, even where such regulations exist, and in states where there are no existing wetland laws, the burden of creating such laws to fill the gap created by the SWANCC decision may be insupportable. The EPA has for 30 years acted to "protect human health and safeguard the natural environment" through section 404 of the Clean Water Act. A broad interpretation of the SWANCC decision could speedily undermine 30 years of effort, and leave many very important water sources vulnerable in direct contradiction to the EPA's stated mission.

The term "isolated wetland" is misleading in most cases. Most wetlands without obvious surface water connections to other surface waters have subsurface connections to surface or ground

[1] Washington Department of Natural Resources. 1997. Final Habitat Conservation Plan.
[2] Washington Department of Natural Resources. 1992. Forest Resources Plan.

waters; or may have seasonal, intermittent or ephemeral surface connections that, while active, can have direct impact on downstream water quality.

Wetlands that are truly isolated from surface and groundwater sources in a hydrologic sense are likely to be bogs. Bogs are among our most unique, fragile and rare habitat types, taking thousands of years to develop, and supporting a unique community of specially adapted plant species that, if disturbed, is irreplaceable within our lifetimes.[3] As the most vulnerable to disturbance of any wetland type, bogs require protection such as that long provided under section 404.

Small, "isolated" wetlands provide sites for groundwater exchange, and may collect overland flow during storm events, attenuating flood peaks. They may have habitat significance disproportionate to their size, depending on the species that use them and where they appear on the landscape[4].

The EPA's mandate is to protect human health and safeguard the natural environment. Nothing could be more critical to those aims than safeguarding headwater sources. Previous EPA water regulations were consistent with and supported the management goals of the DNR. We hope very much to see that protection restored.

Respectfully,

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[3] Bigley, R.and S. Hull, 2000. Recognizing Wetlands and Wetland Indicator Plants on Forest Lands in Washington. Washington State Department of Natural Resources, Olympia, WA

[4] Richter, K.O. and A L. Azous, 1995. Amphibian Occurrence and Wetland Characteristics in the Puget Sound Basin. Wetlands 15(3):305-512.